

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

Michael E. Wyatt

Plaintiff,

V.

Johnny Owens, *et al.*,

Defendants.

Case No. 7:14-cv-492-NKM-RSB

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff Michael E. Wyatt (“Mr. Wyatt”), through his attorneys, complains against Johnny Owens (“Owens”), Allen Shelton (“Shelton”), Scott Wyatt (“Scott Wyatt”), Thomas Nicholson (“Nicholson”), and Robert Worsham (“Worsham”) (collectively the “defendants”) as follows:

JURISDICTION AND VENUE

1. Mr. Wyatt brings this action pursuant to 42 U.S.C § 1983 against defendants for committing acts under the color of state law which deprived Mr. Wyatt of his rights secured by the Fourth Amendment of the U.S. Constitution.

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a)(3) because Mr. Wyatt seeks redress for civil rights violations under 42 U.S.C. § 1983.

3. Venue is proper in the Western District of Virginia pursuant to 28 U.S.C. § 1391(b)(2) because it is where the events giving rise to this complaint occurred.

PARTIES

4. Plaintiff Michael E. Wyatt is a citizen of the United States and resident of the Commonwealth of Virginia. On July 4, 2012, Mr. Wyatt was incarcerated in the Danville City Jail until he was convicted for robbery after a guilty plea. On September 24, 2013, after his conviction, Mr. Wyatt was transferred to the custody of the Virginia Department of Corrections and placed at Wallens Ridge Prison in Big Gap, VA. Mr. Wyatt was later transferred to River North Correctional Center in Independence, VA, where he resides today.

5. Defendant Johnny Owens is an investigator or law enforcement officer employed by the Pittsylvania County Sheriff's Office located in Chatham, VA. Defendant Owens is being sued in his individual capacity for violating Mr. Wyatt's right to be free from unreasonable and excessive force under the Fourth Amendment of the U.S. Constitution.

6. Defendant Allen Shelton is an investigator or law enforcement officer employed by the Pittsylvania County Sheriff's Office located in Chatham, VA. Defendant Shelton is being sued in his individual capacity for violating Mr. Wyatt's right to be free from unreasonable and excessive force under the Fourth Amendment of the U.S. Constitution.

7. Defendant Scott Wyatt is an investigator or law enforcement officer employed by the Pittsylvania County Sheriff's Office located in Chatham, VA. Defendant Scott Wyatt is being sued in his individual capacity for violating Mr. Wyatt's right to be free from unreasonable and excessive force under the Fourth Amendment of the U.S. Constitution.

8. Defendant Robert Worsham is a special investigator or law enforcement officer employed by the Pittsylvania County Sheriff's Office located in Chatham, VA. Defendant

Worsham is being sued in his individual capacity for violating Mr. Wyatt's right to be free from unreasonable and excessive force under the Fourth Amendment of the U.S. Constitution.

9. Defendant Thomas Nicholson is police captain employed by the Pittsylvania County Sheriff's Office located in Chatham, VA. Defendant Nicholson is being sued in his individual capacity for violating Mr. Wyatt's right to be free from unreasonable and excessive force under the Fourth Amendment of the U.S. Constitution.

FACTS

10. On July 3, 2012, Defendants were engaged in a search for Mr. Wyatt, who was wanted by law enforcement in connection with a recent robbery. Defendants Owens and Shelton, driving an unmarked police car, observed Mr. Wyatt at the Budget Inn Hotel on Piney Forest Road in Danville, VA. Mr. Wyatt left the hotel in his car, and Defendants Owens and Shelton pursued him with their emergency equipment engaged.

11. Following a pursuit, Mr. Wyatt exited his vehicle in a parking lot off of Cahill Court, also in Danville, VA. Defendant Scott Wyatt grabbed Mr. Wyatt by his upper body and he and Defendant Shelton slammed Mr. Wyatt onto the pavement where they restrained Mr. Wyatt.

12. After Defendants Scott Wyatt and Shelton tackled Mr. Wyatt to the pavement, a Danville City Police officer arrived on the scene in a marked police car with his dash camera engaged and recording the subsequent events. Defendant Scott Wyatt then repeatedly struck Mr. Wyatt on the left side of his body and head.

13. After Mr. Wyatt was held on the pavement by Defendants Scott Wyatt and Shelton, Defendants Nicholson and Owens also grabbed Mr. Wyatt. Defendant Owens then repeatedly punched Mr. Wyatt in the upper body, abdomen, and face. At this point, Defendants Scott Wyatt, Shelton, Nicholson, and Owens were pinning Mr. Wyatt to the ground.

14. While Mr. Wyatt was pinned to the ground, with his arms immobilized, Defendant Worsham arrived on the scene in another unmarked police vehicle. Defendant Worsham ran from his vehicle to the other Defendants and began striking Mr. Wyatt with his fist and knee.

15. Mr. Wyatt was immobilized during the time period when Defendants were beating him. At no point did Mr. Wyatt use or threaten force against the Defendants.

16. Additional Danville City Police officers arrived on the scene during the beating.

17. During the beating, Mr. Wyatt lost consciousness. Two officers then picked up Mr. Wyatt while he was unconscious and tossed him onto a grassy area adjacent to the parking lot. At some point EMS personnel were called and the emergency team transferred Mr. Wyatt to the Danville Regional Medical Center by ambulance, where he was treated for his injuries over the next two days.

18. The beating seriously injured Mr. Wyatt's eyes, head, face, ears, ribs, and caused him to lose consciousness. He still suffers from the effects of the beating today.

LEGAL CLAIM:

Section 1983—Unreasonable Use of Force in Violation of the Fourth Amendment

19. Plaintiff hereby realleges Paragraphs 1 through 18 as if fully restated herein.

20. At all times relevant to this action, Defendants were acting under the color of state law. The officers were all employed by the Pittsylvania County Sheriff's office, had flashing lights on their cars once on the scene, and announced themselves as law enforcement officers.

21. Defendants engaged in unreasonable force while arresting Mr. Wyatt in violation of Mr. Wyatt's Fourth Amendment right under the U.S. Constitution to be free from unreasonable and excessive force. Defendants tackled, struck, punched, and beat Mr. Wyatt, and officers proceeded to toss him on the ground after he was unconscious.

22. At the time of the beating, Mr. Wyatt was unarmed, immobilized, and had surrendered.

23. As a result of the use of unreasonable force, Mr. Wyatt suffered serious injuries to his eyes, face, ears, ribs, and abdomen. He was treated for two days in the hospital and still suffers from the effects of his injuries today.

24. A reasonable officer in this situation would have known, pursuant to clearly established law, that Defendants' actions violated Mr. Wyatt's constitutional rights.

PRAYER FOR RELIEF

Wherefore, Mr. Wyatt respectfully prays that this court enter judgment granting the plaintiff the following relief:

- A. A trial by jury;
- B. compensatory damages against each defendant, jointly and severally;
- C. punitive damages against each defendant;
- D. costs and attorney's fees; and
- E. any additional relief this court deems just, proper and equitable.

At this time, assessment and calculation of the precise dollar amount in damages in ongoing and incomplete.

Dated: June 10, 2016

\s\ Morgan Branch

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CERTIFICATE OF SERVICE

I, Morgan Branch, one of the attorneys for Plaintiff Michael E. Wyatt, certify that I caused a copy of the attached to be served by ECF and first-class mail upon:

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this 30th day of June, 2016.

\s\ Morgan Branch